

REMARKS:

Claims 1-5, 8-19, and 22-28 are currently pending in the application. Claims 1-5, 8-19, and 22-28 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,629,128 to Graham W. Glass (“Glass”).

REJECTION UNDER 35 U.S.C. § 102(e):

Claims 1-5, 8-19, and 22-28 stand rejected under 35 U.S.C. § 102(e) over Glass.

Although Applicants believe claims 1, 11-15 and 25-28 are directed to patentable subject matter without amendment, Applicants have amended claims 1, 11-15 and 25-28 to more particularly point out and distinctly claim the Applicants invention. These amendments are not considered narrowing or necessary for patentability. By making these amendments, Applicants do not indicate agreement with or acquiescence to the Examiner’s position with respect to the rejections of these claims under 35 U.S.C. § 102(e), as set forth in the Office Action.

The Office Action alleges that Glass discloses a “proxy component operable to execute data access operations optimized for remote communications” and a “client component operable to execute data access operations optimized for local communications.” The Applicants have reviewed Glass in detail, particularly looking for a proxy component and a client component that optimizes data access operations for either local or remote communication, relied upon by the Examiner. However, Glass fails to disclose each and every limitation recited by claims 1-5, 8-19, and 22-28. Thus, Applicants respectfully submit that claims 1-5, 8-19, and 22-28 patentably distinguish over Glass.

For example, with respect to amended independent claim 1, this claim recites:

A distributed software system, comprising:
at least one server component supporting one or more server objects having associated data, the server component being within a first container and
at least one client component that is within a second container, distributed from, the server component and operable to:
access data associated with one or more of the server objects such that whether the server component is local to or remote from the client component is substantially transparent to the client component;
if the first container is local to the second container, in order to access server object data, execute data access operations optimized for local communications; and
if the first container is remote from the second container, in order to access server object data, access at least one proxy component that is:
within the second container;
supporting one or more proxy objects each providing a local version of a corresponding server object; and
operable to:
provide the client component with access to data associated with a proxy object in response to the client component requesting data associated with the corresponding server object;
execute data access operations optimized for remote communications to access data associated with the corresponding server object; and
substantially immediately reflect all changes to data associated with the proxy objects back to data associated with the corresponding server objects. (Emphasis Added).

Amended independent claims 11-15 and 25-28 recite similar limitations. Glass fails to disclose each and every limitation of amended independent claims 1, 11-15, and 25-28.

For example, the Examiner asserted that Glass discloses a “proxy component operable to execute data access operations optimized for remote communications” and a “client component operable to execute data access operations optimized for local communications.” The Applicants respectfully traverse the Examiners assertions regarding the subject matter disclosed in Glass. The Applicants direct the Examiner’s attention to the cited text of Glass which states:

In order to optimize system performance, generated remote proxy classes remain in memory until the distributed object management system is shut down. (Column 6, Lines 64-67) (Emphasis Added).

The Applicants respectfully submit that the above-cited text of Glass merely describes an approach to optimize system performance by allowing the remote proxy classes to remain static in memory until the system is shut down. Glass does not disclose, teach or suggest the optimization technique disclosed in the claimed invention of synchronizing between proxy objects and their corresponding server objects in order to execute data access operations for remote or local communications. In fact, Glass teaches away from the claimed invention since the remote proxy classes remain static in memory and do not immediately or at any time reflect any changes to their corresponding server object classes. As mentioned above, Glass does not disclose data access operations optimized for either local or remote communications. Thus, Glass fails to optimize system performance in the same manner as described in the claimed invention for either local or remote communications since the only optimization disclosed in Glass is associated with allowing the remote proxy classes to remain static in memory.

The Applicants further submit that Glass does not disclose a server component that is substantially transparent to a client component whether the client component is local to or remote from the server component. Although Glass discloses a local object that is unconcerned with the location of the subject object, (Column 6, Lines 31-34), Glass does not disclose a subject object, a server object, or even a server component that is substantially transparent to a local or remote client component. Thus, Glass cannot provide a substantially transparent server component to a client component since both the server object and its corresponding proxy object in no way appear identical, thereby transparent, to the client component.

Thus, the allegation in the present Office Action that Glass discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how Glass is considered to anticipate all of the limitations in independent claim 1. A prior art reference anticipates the claimed invention

under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference. MPEP § 2131. Applicants respectfully point out that "it is incumbent upon the [E]xaminer to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Applicants respectfully submit that the Office Action has failed to establish a *prima facie* case of anticipation in independent claim 1 under 35 U.S.C. § 102 with respect to Glass because Glass fails to identically disclose every element of the Applicants claimed invention, arranged as they are in Applicants claim.

With respect to amended independent claims 11-15 and 25-28 each of these claims includes limitations similar to those discussed above in connection with amended independent claim 1. Thus, amended independent claims 11-15 and 25-28 are considered patentably distinguishable over Glass for at least the reasons discussed above in connection with amended independent claim 1. Furthermore, dependent claims 2-5 and 8-10 which depend from amended independent claim 1 and dependent claims 16-19 and 22-24 which depend from amended independent claim 15 are also considered patentably distinguishable over Glass. Thus, dependent claims 2-5, 8-10, 16-19, and 22-24 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

Thus, for the reasons set forth herein, the Applicants submit that claims 1-5, 8-19, and 22-28 are not anticipated by Glass. The Applicants further submit that claims 1-5, 8-19, and 22-28 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of claims 1-5, 8-19, and 22-28 under 35 U.S.C. § 102(e) be reconsidered and that claims 1-5, 8-19, and 22-28 be allowed.

THE LEGAL STANDARD FOR ANTICIPATION REJECTIONS UNDER 35 U.S.C. § 102:

The following sets forth the legal standards for "anticipation."

The events that can lead to anticipation can be divided into the following seven categories, all defined by statute:

1. Prior Knowledge: The invention was publicly known in the United States before the patentee invented it.

2. Prior Use: The invention was publicly used in the United States either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.

3. Prior Publication: The invention was described in a printed publication anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.

4. Prior Patent: The invention was patented in another patent anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his application.

5. On Sale: The invention was on sale in the United States more than one year before the patentee filed his application.

6. Prior Invention: The invention was invented by another person in the United States before the patentee invented it, and that other person did not abandon, suppress or conceal the invention.

7. Prior U.S. Patent: The invention was described in a patent granted on a patent application filed in the United States before the patentee made the invention.

Each of those seven events has its own particular requirements, but they all have the following requirements in common:

1. Anticipation must be shown by clear and convincing evidence.
2. If one prior art reference completely embodies the same process or product as any claim, the product or process of that claim is anticipated by the prior art, and that

claim is invalid. To decide whether anticipation exists, one must consider each of the elements recited in the claim and determine whether all of them are found in the particular item alleged to be anticipating prior art.

3. There is no anticipation unless every one of those elements is found in a *single* prior publication, prior public use, prior invention, prior patent, prior knowledge or prior sale. One may not combine two or more items of prior art to make out an anticipation. One should, however, take into consideration, not only what is expressly disclosed or embodied in the particular item of prior art, but also what inherently occurred in its practice.

4. There cannot be an accidental or unrecognized anticipation. A prior duplication of the claimed invention that was accidental, or unrecognized, unappreciated, and incidental to some other purpose is not an invalidating anticipation.

Those four requirements must be kept in mind and applied to each kind of anticipation in issue. The following additional requirements apply to some categories of anticipation.

1. Prior Knowledge: An invention is anticipated if it was known by others in the United States before it was invented by the patentee. "Known," in this context, means known to the public. Private knowledge, secret knowledge or knowledge confined to a small, limited group is not necessarily an invalidating anticipation. Things that were known to the public only outside the United States are not invalidating anticipation.

2. Prior Use: An invention is anticipated if it was used by others before it was invented by the patentee, or more than one year before the patentee filed his patent application. "Use," in this context, means a public use.

3. Prior Publication: A patent is invalid if the invention defined by the Claims was described in a printed publication before it was invented by the patentee or more than one year prior to the filing date of his application. For a publication to constitute an anticipation of an invention, it must be capable, when taken in conjunction with the knowledge of people of ordinary skill in the art, of placing the invention in the possession

of the reader. The disclosure must be enabling and meaningful. In determining whether the disclosure is complete, enabling, and meaningful, one should take into account what would have been within the knowledge of a person of ordinary skill in the art at the time, and one may consider other publications that shed light on the knowledge such a person would have had.

4. Prior Patent: If the invention defined by the claims was patented in the United States or a foreign country, either before it was invented by the inventor or more than one year before the inventor filed his patent application, then the invention was anticipated. The effective date for this type of anticipation is the date on which two things co-existed: (i) the owner of the referenced patent had the right to enforce that patent; and (ii) the reference patent was available to the public. What was "patented" in the reference patent is determined by what is defined by its claims, interpreted in the light of the general description.

5. On Sale: A patent is invalid if the invention claimed in it was on sale in the United States more than one year prior to the application filing date.

6. Prior Invention: If the invention defined by the claims was invented by another person, in the United States, before it was invented by the inventor, and that other person did not abandon, suppress, or conceal the invention, the invention lacks novelty. A prior invention, even if put in physical form and shown to produce the desired result, is not an invalidating anticipation unless some steps were taken to make it public. However, it is not necessary that the inventor had knowledge of that prior invention.

7. Prior U.S. Application: A patent is invalid for lack of novelty if the invention defined by the claims was described in a United States patent issued on a patent application filed by another person before the invention was made by the inventor. The effective date of a prior application for purposes of this issue is the date on which it was filed in the United States. Foreign-filed patent applications do not apply. If the issued United States patent claims the benefit of more than one United States application, its effective date as an anticipation is the filing date of the first United States application that discloses the invention claimed in that referenced patent.

Experimental Use Exception: The law recognizes that it is beneficial to permit the inventor the time and opportunity to develop his invention. As such there is an "experimental use" exception to the "public use" and "on sale" rules. Even though the invention was publicly used or on sale, more than one year prior to the application filing date, that does not invalidate the patent, provided the principal purpose was experimentation rather than commercial benefit. If the primary purpose was experimental, it does not matter that the public used the invention or that the inventor incidentally derived profit from it.

When a public use or sale is shown, the burden is on the inventor to come forward with evidence to support the experimental use exception. Only experimentation by or under the control of the inventor qualifies for this exception. Experimentation by a third party, for its own purposes, does not qualify for this exception. Once the invention leaves the inventor's control, its use is a public one, even if further experimentation takes place.

The experimentation must relate to the claimed features of the invention. And it must be for the purpose of technological improvement, not commercial exploitation. If any commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation. A test done primarily for marketing, and only incidentally for technological improvement, is a public use.

CONCLUSION:

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

A Request for Continued Examination is submitted herewith that includes an authorization for charging the \$790.00 RCE fee and the \$120 One-Month Extension of Time fee. The undersigned hereby authorizes the Director to charge any additional fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**. If the extension of time is missing, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

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Date


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